THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION Nos.21085 and 21106 of 2006

11.10.2006

Between:

Maddina Mallaiah Choudary, S/o.Venkama Naidu
And others

… Petitioners

AND

The District Collector, Nellore District
And others

… Respondents

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION Nos.21085 and 21106 of 2006

COMMON ORDER:

The five petitioners filed W.P.No.21085 of 2006 seeking a writ of Mandamus declaring the action of the respondents in demolishing the petitioners' fish ponds in the land admeasuring Acs.33.50 in survey No.652/1 of Eeduru and Koduru Villages of Totapalli Gudur Mandal in Nellore District as arbitrary and violative of Articles 14, 19, 21 and 300A of Constitution of India.

The brief fact of the matter is as follows. The petitioners own various extents of lands in survey No.652/1. They allege that they purchased the land for valid sale consideration. About twenty (20) years ago the lands were converted into fish ponds and they also obtained electricity connections. The respondents never raised any objection for converting the agricultural lands into fish ponds. In August 2006, the petitioners purchased hatchery scamby seed and let it into fish ponds, which is likely to be ready for harvest in another four months. The third respondent passed orders on 17.3.2006, which are allegedly served on the petitioners on 05.10.2006. Though the petitioners submitted explanations, no orders are passed. Curiously, on 08.10.2006, the respondents demolished the fish ponds of neighbours with the police force. The petitioners apprehend that their fish ponds might as well be demolished by the respondents.

In W.P.No.21106 of 2006, there are fifteen (15) petitioners. They claim to be occupants of agricultural lands in survey Nos.460,

499/6 & 7 etc., situated at Eeduru, Mallikarjunapuram and Koduru Villages. They converted these agricultural lands into fish ponds allegedly for the reason that all the lands surrounding their fields were converted into fish ponds. One Annadevuni Ramachandra Reddy and others filed W.P.No.9271 of 2005 complaining about illegal fish ponds existing in agricultural lands. This Court passed orders on 22.6.2005 directing the officials to dispose of the representations. In pursuance thereof, the fourth respondent issued a show cause notice on 05.8.2005 alleging that the lands in petitioners' occupation falling within Full Tank Level (FTL) of Eeduru Koduru tank and that carrying on aquaculture in the land covered by FTL without permission is illegal. The petitioners were issued show cause notice as to why fish ponds should not be removed. The petitioners submitted explanations. After considering the same, the fourth respondent passed orders in Rc.B/493/05, dated 17.3.2006 directing the petitioners to stop aquaculture forthwith. The petitioners were also informed that the fish ponds should be removed and the expenditure incurred is recovered under A.P. Revenue Recovery Act. The petitioners allege that proceedings dated 17.3.2006 were served on them only on 05.10.2006 and that the respondents are now attempting to remove the fish ponds by demolishing them.

Learned Counsel for the petitioners in both the writ petitions contend that the petitioners have approached the Aquaculture Authority for permission to convert/carry on fish pond operations as the land is not fit for agriculture. They also urge that the petitioners have left seed in the ponds, which would be ready for harvest within four months and if the petitioners are given time to harvest the crop, they would give undertaking not to carry on aquaculture in the fishponds and they would voluntarily demolish fish ponds. They also placed reliance on an unreported judgment of the Division Bench of this Court in **Duvvuru Ram Prasad Reddy v The District Collector, Nellore**[1]. Both the Counsel do not however deny that in view of the decision of the Division Bench of this Court in **Madiraju Padma Rambabu v District Forest Officer, Kakinada**[2], conversion of agricultural lands into fish ponds/ aquaculture is illegal without valid permission from Aquaculture Authority. The petitioners only prayed for some time to remove the fish from the fish ponds.

A perusal of the order in **Duvvuru Ram Prasad Reddy** (supra)

would show that the writ petition was filed assailing the order dated 24.6.2006 passed by the Mandal Revenue Officer, Vakadu Mandal (MRO), for removing fish ponds. The same was assailed in the writ petition. This Court dismissed the said writ petition on 07.7.2006. The Division Bench did not disturb the order of the learned single Judge and disposed of the Writ Appeal observing as under.

> In our opinion, the request made by the learned counsel appears genuine, reasonable and merits acceptance. Hence, without disturbing the order under challenge, we direct the Mandal Revenue Officer concerned to allow the appellant to harvest/lift the produce of seeds till 31.8.2006. This would be subject to the condition that within seven days from today, the appellant files a written undertaking before the Mandal Revenue Officer concerned that he will not undertake prawn culture/fish culture/aqua culture in his field after 31.8.2006… … The appeal is disposed of in the manner indicated above. If the appellant is found to have violated the undertaking given before the Mandal Revenue Officer, then the same would be construed as a breach of undertaking given before this Court. In that event the Mandal Revenue Officer and other functionaries of the State shall necessarily initiate proceedings against him under the Contempt of Courts Act, 1971.

In these cases, the petitioners may not be entitled for the relief as was granted by the Division Bench in **Duvvuru Ram Prasad Reddy** (supra). As noticed supra, the order of the MRO dated 24.6.2006 was immediately challenged in July 2006. But, in W.P.No.21085 of 2005, the MRO initiated action under A.P. Land Encroachment Act, 1905 (the Act, for brevity) and issued notice under Section 7 of the Act. The petitioners submitted explanations. After considering the explanations, the order of eviction under Section 6 of the Act was passed on 17.03.2006 ordering eviction of the petitioners. In spite of the same, the petitioners had an audacity to continue with their illegal activities of raising fish in the Government land from which they were directed to be evicted. In the second case as well, the orders were passed by the MRO on 17.3.2006 but still the petitioners continued operations in fish ponds. In both the cases, though the petitioners allege that the proceedings of the MRO dated 17.3.2006 were served on them on 05.10.2006, no evidence is placed before this Court in support of the same. Therefore, an inference can be drawn that the MRO served the orders immediately after 17.3.2006 and these

orders have become final. The petitioners have not specifically challenged these orders either before this Court or before appropriate higher revenue officials. Therefore, this Court is not inclined to pass any orders to enable the petitioners to catch the fish. Such an order, in the considered opinion of this Court, would amount to putting premium on illegal activities. A writ of Mandamus shall not be issued from this Court to legalise an illegal action.

The writ petitions, with the above observations, are accordingly dismissed. No costs.

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October 11, 2006. (**V.V.S.RAO, J**)

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[1] W.A.No.771 of 2006, dated 20.7.2006

[2] 2002(1) ALD 728 (D.B.)